from approximately 8.35 p.m. or 8.40 p.m. to 9.05 p.m." and therefore acquitted him. The Public Prosecutor appealed against this finding on the ground that it was bad in law.

At the hearing of the appeal Mr. Hepworth appeared for the appellant and Mr. Hall for the respondent. The basis of the appellant's case was that the learned Magistrate had negatived any intention on the defendant to drive his car during a stated period of one half-hour but the defendant himself in his evidence had admitted that he drove the car from Tiger Lane to the scene of the accident. Mr. Hepworth submitted that the wording of the charge ("at about 9.05") was sufficiently broad to cover the seconds before the accident when, on his own admission, defendant obviously had the intention to drive. He further submitted that the proviso to section 6 of the Proclamation was never intended to apply to a case where a person had actually driven his car but had come to a halt: it was intended to cover cases such as *Jowett-Shooter v. Franklin*[1].

On behalf of the respondent Mr. Hall made two submissions. The first was that on the prosecution evidence the learned Magistrate should never have called upon the defence. I disagree with this submission. Two witnesses had stated that they saw, as they thought, the defendant get out of the car by the door next to the driver's seat and there was no other person either in the car or in sight in the immediate neighbourhood. In these circumstances I consider that the fact that defendant had been sitting in the driver's seat was so probable that a prudent man would accept it as proved. The second submission had, in my opinion, a great deal more substance. It was that the intent to drive, mentioned in the proviso to section 6, means the intent at the time when found sitting in the driving seat and not any intention formed half an hour, or any other period of time, earlier.

Mr. Hepworth countered this with the submission that the proviso could never have been intended to produce a situation in which a defendant can say "I admit I was driving my car when the accident occurred but from that moment I have had no intention of driving any further." But this is not a complete answer in my opinion. In the circumstances described, if the prosecution could prove that defendant was sitting in the driving seat at the time of the accident, the same evidence would presumably be adequate to prove that defendant was driving the vehicle and he would have been so charged.

No local precedent was cited and I have been unable to find one. Also, no assistance can be derived from English cases as the various Road Traffic Acts contain no similar provision. In those Acts the offence is being "in charge of a motor vehicle." In these circumstances it is my duty to construe the proviso by giving the words therein appearing their ordinary grammatical meanings.

In my opinion the portion of the section referring to "sitting in the driving seat" is intended to refer primarily to the case of a stationary car. If the car is in motion then the provision relating to driving is applicable. For this reason I am of opinion that the intention to which the proviso refers is that entertained at the time the person is found sitting in the seat. For this reason I dismiss the appeal and will only add that I am in agreement with a remark made by Mr. Hepworth to the effect that the charge in this case should not have been altered.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*

REG. v. CHAN CHOON WENG & ORS.

[A. Cr. J. (Spenser Wilkinson J.) January 12, 1956]

[Penang — Criminal Appeal Nos. 63 & 64 of 1955]

Criminal Procedure Code (Cap. 21), s. 416(1) — Offence punishable with death or life imprisonment — Bail.

The respondents in this case were charged with gang robbery under s. 395 of the Penal Code. The learned Magistrate released the respondents on bail and said in his grounds of judgment: "In the case under consideration the offence is not punishable with death or penal servitude for life."

Held: as gang robbery under s. 395 of the Penal Code is punishable with life imprisonment, the learned Magistrate had no power to grant bail under s. 416(1) of the Criminal Procedure Code.

D. C. Jackson (Sr. Federal Counsel) for the appellant.

Respondents in person.

Cases referred to:—

(1) *Re K. S. Menon* (1946) M.L.J. 49.

(2) *R. v. Ooi Ah Kow* (1952) M.L.J. 95

Spenser Wilkinson J. : — These two appeals were heard together as the same point arose in both and indeed there is now really only one case. All the five respondents were charged in the Magistrate's Court with gang robbery under section 395 of the Penal Code and although the first three respondents were apprehended earlier than the other two on the 19th December, 1955 a preliminary enquiry was fixed for the 9th February, 1956 in respect of all five respondents and the learned Magistrate acceded to their application for bail. Against the Order of the learned Magistrate releasing the respondents on bail the Crown appealed.

I agree entirely with what the learned Magistrate has stated in his grounds of decision with the exception of this one sentence:—

"In the case under consideration the offence is not punishable with death or penal servitude for life."

This is the mistake which has caused the learned Magistrate to make the order appealed against. An offence under section 395 of the Penal Code is punishable with penal servitude for life (that is to say, under the law as it now stands, with life imprisonment), and therefore comes within that part of section 416(1) of the Criminal Procedure Code which says that persons accused of a non-bailable offence shall not be released on bail if there appear reasonable grounds for believing that they have been guilty of an offence punishable with death or penal servitude for life. The expression "punishable with death or penal servitude for life" must be read disjunctively and has been held to mean "punishable with death or punishable with penal servitude for life" (see *K. S. Menon*[1], and *Regina v. Ooi Ah Kow*[2]).

In my opinion there is no doubt in law that where an accused is charged with an offence punishable with life imprisonment a Magistrate has no power under section 416(1) to grant bail whether that offence is or is not also punishable with death.

For these reasons I rescinded the order of the learned Magistrate granting bail to all the respondents.

The High Court is not limited in regard to the length of a remand but I thought it might be as well for the accused to appear once more in the Magistrate's Court before the commencement of the enquiry and I therefore remanded them in custody until the 2nd February, 1956 when both cases can be mentioned and possibly consolidated in the Magistrate's Court.

Appeal allowed.

DY. PUBLIC PROSECUTOR v. TARA SINGH

[A. Cr. J. (Whitton J.) February 10, 1956]

[Singapore — Magistrate's Appeal No. 184 of 1955]

Road Traffic Ordinance, 1941, s. 27(1) — Charge of being found in the driver's seat of a taxi whilst under the influence of drink — Intention to drive the vehicle — Onus is on accused to show that he had no intention of driving.

In this case the respondent was acquitted on a charge of being found sitting in the driver's seat of a taxi whilst under the influence of drink. The learned Magistrate found that the respondent was under the influence of drink to such an extent as to be incapable of having proper control of the vehicle and he also found that the respondent was seated at the steering wheel of the taxi and was asleep. Applying the proviso to s. 27(1) he held that so long as the respondent was asleep he could not have any intention of driving the vehicle and that consequently the case was covered by the proviso. The Public Prosecutor appealed.

Held: (1) the proviso to s. 27(1) of the Road Traffic Ordinance places on an accused person under the section the burden of proving that he had no intention of driving the motor vehicle contrary to the proviso of the section and that burden can only be discharged by the defence satisfying the Court that the accused had no intention to drive; (2) the words in the proviso "had no intention" relate to the time the accused was sitting in the driving seat and do not extend to any antecedent period; (3) evidence that a person found in the driving seat was asleep does not prove that such person had no intention of driving: to satisfy the proviso, the accused must adduce some evidence of a positive resolution not to drive before the inference ordinarily to be drawn from occupation of the driver's seat can be said to have been rebutted.

MAGISTRATE'S APPEAL.

J. F. McWilliam (Crown Counsel) for the appellant.

S. H. D. Elias for the respondent.

Whitton J. : — In this case the respondent was acquitted by the Traffic Magistrate on a charge of being found sitting in the driver's seat of a taxi about 3.25 p.m. on 21st July 1955 at the junction of Geylang Road and Kallang Road whilst under the influence of drink, in contravention of section 27 of The Road Traffic Ordinance, 1941.

The Magistrate found that the respondent was under the influence of drink to such an extent as to be incapable of having proper control of a vehicle, and I think the medical and police evidence amply justified this conclusion. He also found that the respondent was seated at the steering wheel of the taxi and was asleep, and there was ground for his so finding. Applying the proviso to section 27(1) to this fact he formed the view that so long as the respondent was asleep he could not have had any intention of driving the vehicle, and that consequently his case was covered by the proviso. Accordingly he acquitted the respondent.

I consider it is clear the learned Magistrate failed to comprehend the nature of the proviso. It places on a person accused under the section the burden of proving that he had no intention of driving the motor vehicle contrary to the provisions of the section, and I conceive that burden can only be discharged by the defence satisfying the Court it is probable the accused had no intention of driving, since I believe that there is no authority for suggesting that the burden is even of a lesser degree than one of establishing that the balance of probability is that his story is true in those cases where an obligation of proof is placed by statute on an accused person. It was submitted by Mr. Elias for the respondent and conceded by Mr. McWilliam for the Crown, correctly I think, that the words in the proviso "had no intention" relate to the time that the